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METROPOLITAN LIFE INSURANCE COMPANY

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORIGINAL
FILED
MAY 29 2008
RICHARD W. WEINGART
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

METROPOLITAN LIFE INSURANCE
COMPANY,

Plaintiff,

vs.

DONNA DOMINO and DOES 1-20,
inclusive,

Defendants.

Case No.

C08-02710

COMPLAINT FOR VIOLATION OF
FEDERAL EMPLOYEES' GROUP LIFE
INSURANCE ACT; UNJUST
ENRICHMENT; AND CONVERSION

DEMAND FOR JURY TRIAL

BY FAX

Plaintiff, METROPOLITAN LIFE INSURANCE COMPANY, through its undersigned
attorneys, as and for its Complaint against Defendant herein, alleges:

PARTIES

1. Plaintiff Metropolitan Life Insurance Company ("MetLife") is an insurance
company organized and existing under the laws of the State of New York with its principal place
of business in New York.

2. Upon information and belief, Defendant Donna Domino ("Defendant") is an
individual residing at 24 Oak Crest Drive, San Rafael, California, 94903. It is the claim of the
Defendant that she was the companion of Ronald G. Sonenshine, the decedent ("Decedent").

3. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
DOES 1 through 20, inclusive, and therefore sue these defendants by such fictitious names.

1 Plaintiff will amend this complaint to allege defendants' true names and capacities when
2 ascertained. Each reference in this complaint to "defendant" or a specifically named defendant
3 refers also to all defendants sued under a fictitious name. Plaintiff is informed and believes and
4 thereon alleges that each of the defendants was the agent, servant, employee and/or
5 representative of the other defendants and that each such defendant at all times herein mentioned
6 committed such acts or omissions within the course and scope of its/his/her agency, employment
7 or representative capacity with full knowledge, consent, authority and ratification of each of the
8 other defendants named herein.

9 JURISDICTION AND VENUE

10 4. In this action, Plaintiff MetLife seeks to recover funds that were inadvertently
11 paid by MetLife to the Defendant pursuant to her claim for life insurance proceeds under the
12 Federal Employees' Group Life Insurance Act ("FEGLIA"), 5 U.S.C. § 8701-8716, a federal
13 statute.

14 5. Pursuant to 5 U.S.C. § 8715, the district courts of the United States have original
15 jurisdiction, concurrent with the United States Court of Federal Claims, of civil actions or claims
16 founded on this chapter. Therefore, the United States District Court for the Northern District of
17 California has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 and 5
18 U.S.C. §8715.

19 6. Upon information and belief defendant is a resident of San Rafael, California.
20 Accordingly, venue is proper in the United States District Court for the Northern District of
21 California, Oakland Division, pursuant to 28 U.S.C. §1391 and Local Rule 3-5(b).

22 INTRADISTRICT ASSIGNMENT

23 7. Venue is proper in either the San Francisco Division of the United States District
24 Court, Northern District of California, or the Oakland Division of the United States District
25 Court, Northern District of California, as these divisions hear cases arising in Marin County and
26 defendant resides in Marin County.

27 BACKGROUND

28 8. In 1954, Congress enacted FEGLIA "to provide low-cost group life insurance to

1 Federal employees." H.R. Rep. No. 2579 at 1 (1954), reprinted in 1954 U.S.C.C.A.N. 3052.

2 9. Federal law authorized the establishment of the Employees' Life Insurance Fund
3 of the Treasury of the United States of America into which employer and employee premiums
4 for the cost of FEGLI insurance ("FEGLI Proceeds") are deposited.

5 10. Payments of FEGLI Proceeds result in withdrawal of funds from the United States
6 Treasury.

7 11. Pursuant to the Appropriations Clause of the Constitution of the United States of
8 America, payments of money resulting in withdrawals from the United States Treasury must be
9 authorized by federal statute. *Office of Personnel Management v. Richmond*, 110 S. Ct. 2465,
10 reh'g denied, 111 S. Ct. 5 (1990).

11 12. Pursuant to 5 U.S.C. §§ 8709 – 8716, the United State Office of Personnel
12 Management ("OPM") is authorized, under 5 U.S.C. §§ 8709–8716, to "prescribe regulations
13 necessary to carry out FEGLIA's purposes."

14 13. FEGLIA, and the associated federal regulations at 5 C.F.R. Part 870, require
15 OPM to contract with a private insurance company to administer the processing of FEGLI claims
16 pursuant to applicable federal law. Pursuant to FEGLIA 5 U.S.C. § 8709, Plaintiff MetLife
17 issued MetLife's Group Policy No. 17000-G, known as the Federal Employees Group Life
18 Insurance Policy (the "FEGLI Policy"), to OPM.

19 14. MetLife is required to make payment of FEGLI Proceeds upon establishment of a
20 valid claim to the proper beneficiary(ies) pursuant to FEGLIA, 5 U.S.C. § 8701-8716.

21 15. The Office of Federal Employees Group Life Insurance ("OFEGLI") (hereinafter
22 "MetLife") is the administrative unit of Plaintiff MetLife charged with the responsibility of
23 administering all FEGLI claims pursuant to FEGLIA, 5 U.S.C. § 8701-8716.

24 16. The business of the FEGLI Program, up to the point of the death of covered
25 employees or retirees, is conducted by agencies of the United States of America.

26 17. The responsibilities of the federal agencies (including OPM for retirees) with
27 regard to the FEGLI program include collecting shares of the cost of the FEGLI coverage
28 through deductions from the salaries of federal employees and the annuity benefits of federal

1 retirees. It is the sole responsibilities of the federal agencies to receive and process requests for
2 changes in beneficiary designations from federal employees and retirees and to submit
3 beneficiary designations to MetLife upon the federal employee's death.

4 18. The decedent, Ronald G. Sonenshine, was covered for life insurance under the
5 FEGLI Policy through his employment with the Presidio Trust located in San Francisco,
6 California.

7 19. At the time of his death on June 12, 2005, the Decedent had no Beneficiary
8 Designation on file with his employer.

9 20. On or about June 30, 2005, the Defendant submitted to the Decedent's employer
10 an executed Beneficiary Designation, dated May 5, 2004, in which he purported to name the
11 Defendant as the sole beneficiary (100%) of the FEGLI Proceeds. This form, however, was not
12 submitted to the Decedent's employer prior to his death thus rendering it invalid under the policy
13 provisions of 5 U.S.C. Statute 8705 (a): Death Claims, Order of Precedence; Escheat, which
14 states:

15 “(a) Except as provided in subsection (e), the amount of group life
16 insurance and group accidental death insurance in force on an
17 employee at the date of his death shall be paid, on the
18 establishment of a valid claim, to the person or persons surviving
19 at the date of his death, in the following order of precedence:

20 **First**, to the beneficiary or beneficiaries designated by the
21 employee in a signed and witnessed writing received before death
22 in the employing office or, if insured because of receipt of annuity
23 or of benefits under subchapter I of chapter 81 of this title as
24 provided by section 8706 (b) of this title, in the Office of Personnel
25 Management. For this purpose, a designation, change, or
26 cancellation of beneficiary in a will or other document not so
27 executed and filed has no force or effect.

28 **Second**, if there is no designated beneficiary, to the widow or
widower of the employee.

Third, if none of the above, to the child or children of the
employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the
survivor of them.

1 **Fifth**, if none of the above, to the duly appointed executor or
2 administrator of the estate of the employee.

3 **Sixth**, if none of the above, to other next of kin of the employee
4 entitled under the laws of the domicile of the employee at the date
of his death."

5 21. Without a valid Designation of Beneficiary form on file the proceeds should have
6 been paid in accordance with the FEGLI statute, which provides for an order of payment where
7 no designation is made. Under said order of payment the Defendant would have received none
8 of the proceeds.

9 22. On or about June 12, 2005, the decedent died.

10 23. After the decedent's death, his employing agency provided MetLife with
11 documents relevant to his coverage under the FEGLI Policy. The only beneficiary designation
12 form included with those documents was the beneficiary designation dated May 5, 2004 naming
13 Defendant Donna Domino.

14 24. Shortly thereafter, Defendant claimed FEGLI Proceeds pursuant to FEGLIA, 5
15 U.S.C. § 8701-8716.

16 25. On or about July 15, 2005, MetLife paid Defendant 100% of FEGLI Proceeds,
17 amounting to \$84,113.93 (Eighty Four Thousand One Hundred Thirteen Dollars and Ninety
18 Three Cents), consisting of \$84,000.00 (Eighty Four Thousand Dollars) in Basic Life Insurance
19 benefits, plus \$113.93 (One Hundred Dollars and Ninety Three Cents) in interest based upon the
20 invalid form submitted by Decedent's employer.

21 26. FEGLIA mandates that life insurance benefits shall be paid to the beneficiary or
22 beneficiaries named by the decedent in a beneficiary designation that meets the requirement of 5
23 U.S.C. § 8705(a) and that said beneficiary form be submitted to his/her employer prior to his/her
24 death. Because the decedent never submitted the designation form dated May 5, 2004 prior to
25 June 12, 2005 naming Defendant, she was not entitled to receive the FEGLI Proceeds.

26 27. On or about August 15, 2005, MetLife advised Defendant in writing that she was
27 not entitled to receive, nor to retain, the FEGLI Proceeds. MetLife requested that Defendant
28 reimburse \$84,113.93. Defendant has willfully and intentionally failed to reimburse MetLife for

1 the FEGLI Proceeds inadvertently paid to her.

2 **COUNT I**

3 **(Violation of FEGLIA, 5 U.S.C. § 8701-8716)**

4 28. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 25
5 as if set forth fully herein.

6 29. On or about May 5, 2004, the decedent purported to designate Defendant Donna
7 Domino, as beneficiary of the FEGLI Proceeds.

8 30. However, said designation form was not submitted to decedent's employer prior
9 to his death, and there was no other designation form on file at the time of his death. The
10 Defendant, subsequent to decedent's death, submitted the form dated May 5, 2004, to Decedent's
11 employer but said form is invalid as it is not in compliance with 5 U.S.C. Section 8705(a).

12 31. Under the FEGLIA statute the proceeds should have been paid out pursuant to the
13 order of payment detailed in the statute. Under the order of payment the Defendant was not
14 entitled to receive **any** of the proceeds of the life insurance policy.

15 32. After decedent's death, on or about June 12, 2005, Defendant was inadvertently
16 paid the full amount of the FEGLI Proceeds, amounting to \$84,113.93 (Eighty Four Thousand
17 One Hundred Thirteen Dollars and Ninety Three Cents). Because the May 5, 2004 beneficiary
18 designation was invalid due to decedent's failure to submit it to his employer prior to his death,
19 Defendant was not entitled to the decedent's FEGLI proceeds.

20 33. Pursuant to 5 U.S.C. § 8705, FEGLIA mandates that FEGLI Proceeds shall be
21 paid to the proper beneficiary or beneficiaries upon the establishment of a valid claim.

22 34. Defendant was not the lawfully designated beneficiary of the decedent's coverage
23 under the FEGLI Policy and thus was not entitled to receive the FEGLI Proceeds , or any portion
24 of them.

25 35. Defendant received FEGLI Proceeds to which she was not entitled in the amount
26 of \$84,113.93 (Eighty Four Thousand One Hundred Thirteen Dollars and Ninety Three Cents).

27 36. On or about August 15, 2005, MetLife advised Defendant of the overpayment,
28 and requested that she reimburse \$84,113.93 (Eighty Four Thousand One Hundred Thirteen

1 Dollars and Ninety Three Cents) of the FEGLI Proceeds inadvertently paid to her.

2 37. Defendant's acceptance of the FEGLI proceeds and refusal to return them to
3 MetLife constitutes a violation of 5 U.S.C. § 8701-8716.

4 38. Defendant is liable to MetLife for reasonable attorney's fees and costs of this
5 action in order to recover the overpayment.

6 39. As a direct and proximate result of Defendant's violation, MetLife is entitled to
7 recoupment of the payment made to Defendant in an amount to be determined at trial but in no
8 event less than \$84,113.93 (Eighty Four Thousand One Hundred Thirteen Dollars and Ninety
9 Three Cents), plus applicable interest, costs, and reasonable attorney's fees.

10 **COUNT II**

11 **(Unjust Enrichment)**

12 40. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 37
13 as if set forth fully herein.

14 41. On or about July 15, 2005, MetLife paid Defendant \$84,113.93 (Eighty Four
15 Thousand One Hundred Thirteen Dollars and Ninety Three Cents) in FEGLI Proceeds.

16 42. Defendant was not the beneficiary of the Insured's coverage under the FEGLI
17 Policy and was thus not entitled to receive any life insurance benefits under applicable federal
18 law.

19 43. On or about August 15, 2005, MetLife wrote Defendant to advise her that she was
20 not entitled to the FEGLI proceeds and to request that she reimburse MetLife \$84,113.93 (Eighty
21 Four Thousand One Hundred Thirteen Dollars and Ninety Three Cents).

22 44. Under the Appropriations Clause (Article I, Section 9) of the United States
23 Constitution, only Congress has the power to authorize disbursement of funds pursuant to
24 FEGLIA. Defendant has no lawful claim to the FEGLI Proceeds because the beneficiary
25 designation naming her for payment was invalid.

26 45. Despite due demand, and in breach of FEGLIA, Defendant has failed and refused
27 to reimburse MetLife the FEGLI Proceeds.

28 46. By receipt of the FEGLI Proceeds and as a result of Defendant's failure to

1 reimburse MetLife for the monies paid, Defendant has been unjustly enriched in the amount of
2 \$84,113.93 (Eighty Four Thousand One Hundred Thirteen Dollars and Ninety Three Cents).

3 47. Defendant is also liable to Plaintiff for reasonable attorneys' fees and costs
4 incurred to recover the FEGLI Proceeds.

5 48. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff is
6 entitled to recoupment of the FEGLI Proceeds in an amount to be determined at trial but in no
7 event less than \$84,113.93 (Eighty Four Thousand One Hundred Thirteen Dollars and Ninety
8 Three Cents), plus applicable interest, costs, and reasonable attorneys' fees.

9 **COUNT III**

10 **(Conversion)**

11 49. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 46
12 as if set forth fully herein.

13 50. Defendant received funds to which she was not entitled. Said funds belonged to
14 Plaintiff.

15 51. After MetLife discovered that the FEGLI Proceeds were inadvertently paid to
16 Defendant, MetLife informed Defendant of the overpayment and requested her to repay the
17 money.

18 52. Despite due demand, Defendant has willfully and intentionally failed to reimburse
19 Plaintiff for the FEGLI Proceeds and, upon information and belief, Defendant has unlawfully
20 converted the \$84,113.93 (Eighty Four Thousand One Hundred Thirteen Dollars and Ninety
21 Three Cents) in FEGLI Proceeds to her own pecuniary gain.

22 53. Defendant is liable to MetLife for reasonable attorney's fees and costs of this
23 action in order to recover the overpayment.

24 54. As a direct and proximate result of Defendant's wrongful conversions of the
25 FEGLI Proceeds, Plaintiff was harmed and is entitled to recoupment in an amount to be
26 determined at trial but in no event less than \$84,113.93 (Eighty Four Thousand One Hundred
27 Thirteen Dollars and Ninety Three Cents), plus applicable interest, costs, and reasonable
28 attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Donna Domino as follows:

1. For damages according to proof;
2. For attorneys' fees;
3. For costs of suit;
4. For prejudgment interest; and
5. For such other and further relief as the Court deems appropriate.

Dated: May 28, 2008

LIVINGSTON LAW FIRM

By: 

Renée Welze Livingston
Attorneys for Plaintiff
METROPOLITAN LIFE INSURANCE
COMPANY

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), plaintiff hereby demands trial by jury.

Dated: May 28, 2008

LIVINGSTON LAW FIRM

By: 

Renée Welze Livingston
Attorneys for Plaintiff
METROPOLITAN LIFE INSURANCE
COMPANY